

***CERTIFIED FOR PUBLICATION***

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

ANTELOPE VALLEY PRESS,

Plaintiff and Appellant,

v.

STEVE POIZNER, as INSURANCE  
COMMISSIONER, etc., et al.,

Defendants and Respondents;

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STATE COMPENSATION INSURANCE  
FUND,

Real Party in Interest.

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B198139

(Los Angeles County  
Super. Ct. No. MS005119)

ORDER MODIFYING OPINION  
AND DENYING PETITION FOR  
REHEARING

THE COURT:

The opinion in this case that was certified for publication and filed on April 30, 2008 is modified in the following manner:

On page 15 of the opinion, add the following paragraph to footnote 12 as a second paragraph in that footnote:

We reject AVP's contention that the court's analysis in *JKH Enterprises* is flawed. AVP asserts that *JKH Enterprises* did not "consider fully" the decision in *Interstate Brands v. Unemployment Ins. Appeals Bd.*, *supra*, 26 Cal.3d 770, 773, 775, where the Supreme Court had affirmed the trial court's determination that certain of the employees of Interstate Brands were not entitled to unemployment insurance benefits, and held that it was proper for the trial court to apply the independent judgment test in reviewing the evidence produced at an administrative hearing because the case affected a fundamental vested right of the employer. We note that the Supreme Court denied review in *JKH Enterprises*. We also note that the *Interstate Brands* court did not address the question whether the subject workers were employees or independent contractors. Their employee status was admitted by Interstate Brands. However, *Borello* did address that issue, and there the Supreme Court simply stated that "[t]he determination of employee or independent-contractor status is one of fact if dependent upon the resolution of disputed evidence or inferences, and the [administrative agency's] decision [on that status issue] must be upheld *if substantially supported*." (*Borello*, *supra*, 48 Cal.3d at p. 349, italics added.) The *Borello* court did not state whether the question of worker status involves or affects a fundamental vested right. As noted in footnote 13, *post*, the evidence in this case is disputed. Therefore, in deciding this appeal in favor of upholding the Commissioner's decision that the carriers are employees and not independent contractors for purposes of workers' compensation insurance, we did so by addressing the question whether that decision is substantially supported by the evidence in the administrative record.

The appellant's petition for rehearing is denied.

There is no change in the judgment.